

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

GENE WILLARD GAYLOR,

Petitioner,

v.

Civil Action No. 5:02-1206

THOMAS MCBRIDE, Warden,  
Mount Olive Correctional Complex,

Respondent.

ORDER

By Standing Order entered on May 20, 2002, and filed in this case on October 3, 2002, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on February 28, 2005. The Magistrate Judge made the following recommendations: (1) that the court confirm and accept the magistrate judge's findings, (2) that the court grant respondent's motion for summary judgment on petitioner's grounds one, two four, five, and six in their entirety (Docket No. 27), (3) that the court deny respondent's motion for summary judgment on petitioner's ground three pending further review and receipt of the transcript of the February 22, 1999, pretrial hearing, and

(4) that the court refer this matter back to the undersigned for the scheduling of further proceedings.

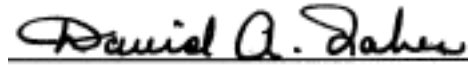
In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Petitioner filed his objections on March 24, 2005. The court has conducted a de novo review of the record as to all of the objections. For reasons to be discussed in a memorandum opinion to be filed forthwith, the court OVERRULES the plaintiff's objections. As such, the court (1) CONFIRMS and ACCEPTS the magistrate judge's findings, (2) GRANTS respondent's motion for summary judgment on petitioner's grounds one, two, four, five, and six in their entirety (Docket No. 27), (3) DENY respondent's motion for summary judgment on petitioner's ground three pending further review and receipt of the transcript of the February 22, 1999, pretrial hearing, and (4) REFERS this matter back to United States Magistrate Judge R. Clarke VanDervort for the scheduling of further proceedings.

The Clerk is directed to forward a copy of this Order to the plaintiff, pro se, and to all counsel of record.

IT IS SO ORDERED this 22nd day of September, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge